

Reference Number: 535-12-DD

Title of Document: Advance Directives

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Applicability: DSN Boards, ~~Private Providers~~ Contracted Service Providers, DDSN Regional Centers

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### **Purpose**

The purpose of this directive is to implement the federal "Patient Self Determination Act" (PSDA) and encourage the execution of advance health care directives. The PSDA requires that each hospital and nursing agency receiving federal Medicare or Medicaid funds provide information to every consumer/resident, about the agency's policies concerning implementation of Advance Directives, and distribute a written description of State law concerning Advance Directives to the consumer/resident. It is also the declared policy of the State of South Carolina to promote the use of Advance Directives as a means of encouraging consumer self-determination and avoiding uncertainty in a health care crisis.

### **Policy**

Many Department of Disabilities and Special Needs (DDSN) consumers are currently competent and capable of making health care decisions for themselves. However, some may experience incapacity at some point in their lives which has an adverse impact on their ability to make appropriate decisions regarding health care. The completion of an Advance Directive stating their desires regarding the provision or withholding of medical care in anticipation of such an event is recommended. However, no agency serving DDSN consumers will condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance health care directive.

Individuals with mental retardation, autism, head and spinal cord injuries, or other related disabilities are fully entitled to all the human and legal rights available to other citizens. Because the individual's disability may adversely impact his/her decision-making process, close scrutiny must be given when consent from a person with a disability is required for a proposed activity or procedure. Assessment for competency related to health care decisions must be determined in accordance with DDSN policy directive (535-07-DD): Obtaining Consent for Minors and Adults, and the South Carolina Adult Health Care Consent Act (S.C. Code Ann. §44-66-10 [Supp. 2007]). This directive only applies to those consumers who are capable to make decisions regarding their health care as defined in directive 535-07-DD.

### **Definition**

#### **Advance Directives:**

For purposes of the Patient Self Determination Act and this directive, "Advance Directive" means a written instruction such as a Living Will or Health Care Power of Attorney, recognized under State law (whether by statute or by a Court of competent jurisdiction) and relating to the provision of health care when the individual is incapacitated.

South Carolina provides by statute for two types of Advance Directives:

- A. **Living Will.** The Death with Dignity Act authorizes competent adults to express their wishes regarding the use or withholding of life-sustaining procedures, including artificial nutrition and hydration, in the event they are diagnosed with a terminal condition or are in a state of permanent unconsciousness and in the further event that they are incapacitated or otherwise unable to express their desires. The statute creates a form for this purpose entitled "Declaration of a Desire for a Natural Death" (see Appendix A). This document and those similar in purpose are commonly referred to as a "Living Will."
- B. **Health Care Power of Attorney.** The South Carolina Probate Code authorizes competent adults to designate another person to make decisions on their behalf about their medical care in the event they become incapacitated. The statutory form created for this purpose is entitled "Health Care Power of Attorney" (see Appendix B).

Consumers may also have prepared other forms of Advance Directives or put into writing their desires concerning certain types of medical care. State statutes, however, require that alternative forms of Advanced Directives must substantially correspond to the forms referenced above. They must also be signed by the consumer and two witnesses.

### **Procedure**

#### **A. Providing Information**

- 1. Each agency/service provider delivering ~~providing~~ residential services shall develop policies and procedures to ensure that upon admission, adult consumers

will be provided with a written statement of the agency's policy regarding the implementation of Advance Directives, and also be provided with a written explanation of the South Carolina law concerning Advance Directives (see Appendix C).

2. Trained staff shall be made available to provide the individual an explanation as requested. In recognition of the sensitive nature of the issue of potential incapacity, it is recommended that each agency assign a small group of skilled staff to discuss Advance Directives with consumer and consumer's family. These staff should receive specialized training. A record should be made of this training.
3. The consumer's medical record shall be documented to reflect that the required information was provided.

#### **B. Requesting Information**

1. Residential agency service providers policies shall provide state that upon admission of adult consumers, staff will inquire into the existence of Advance Directives previously executed by the consumer. The consumer's medical record shall be documented as to the response to the inquiry.
2. In the event staff are aware that a consumer has executed an Advance Directive, they shall request a copy and maintain it in the consumer's record. In the event of admission to a hospital or nursing home, staff shall contact the agency DDSN to make them aware of, and supply, a copy of the consumer's Advance Directive.
3. If the consumer is transferred to any other DDSN facility operated or contracted agency service provider, the Advance Directive(s) shall be sent to the receiving agency service provider for inclusion in the individual's chart at such agency service provider.

#### **C. Providing Assistance**

Residential facilities shall assist apparently competent consumers and consumers who desire to prepare an Advance Directive. As noted above, it is recommended that each agency service provider assign a small group of skilled staff to assist the consumer to execute an Advance Directive. Assistance shall include the following:

1. **Information:** Trained staff should endeavor to answer individual questions on Advance Directives and the effect of a particular Advance Directive in the individual specific circumstances.
2. **Provision of approved forms:** Staff shall make available to those interested individuals copies of the approved State forms for Advance Directives.

3. **Assistance in locating witnesses for execution:** In South Carolina, Advance Directives require a minimum of two witnesses to sign an affidavit verifying the declarant's signature. However, the law prohibits certain individuals (family members, prospective beneficiaries and attending medical personnel) from serving as witnesses. If needed, staff shall assist in locating willing disinterested individuals to witness the consumer's/consumer's execution of the form(s).

Staff shall not serve as a witness to the declarant's signature if they are or have been directly involved in the consumer's care. Staff shall not accept appointment as an agent in a Health Care Power of Attorney or Declaration of a Desire for a Natural Death.

**Staff need not provide assistance to a consumer in circumstances in which staff believe the consumer is unable to make an informed decision regarding the execution of an Advance Directive.**

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*To access the following attachments, please see the agency website page "Attachments to Directives" under this directive number.*

**APPENDIX A - DECLARATION OF A DESIRE FOR A NATURAL DEATH**

**APPENDIX B - HEALTH CARE POWER OF ATTORNEY**

**APPENDIX C - YOUR RIGHT TO MAKE DECISIONS ABOUT YOUR HEALTH CARE**